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Transcript of Charles Davis, Individually and as Designated Representative

Date: April 11, 2024

Case: USA Football, Inc. -v- FFWCT, LLC, et al.

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Phone: 888.433.3767

Email: transcripts@planetdepos.com

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Conducted on April 11, 2024

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<p style="text-align: right;">6</p> <p>1 INDEX (Cont.)</p> <p>2 Exhibit 75 Email string dated 8/31/22 from Travis Burnett re USA Flag Follow Up, FFWCT 7695.....366</p> <p>3 Exhibit 76 Email dated 2/29/24 from Charles Davis to Curtis Holloman re USA Football subpoenas, CH 41.....370</p> <p>4 Exhibit 77 USA Flag Football Rulebook.....376</p> <p>5 Exhibit 78 Printout from USA Flag's website printed on 7/13/23.....381</p> <p>6 Exhibit 79 Email dated 10/24/22 from Travis Burnett to Steve Neil and Charles Davis re USOPC Member Application, FFWCT 7481.....384</p> <p>7 Exhibit 80 Email dated 10/24/22 from Travis Burnett re USOPC Member Application with NGB Budget, FFWCT 7487.....388</p> <p>8 Exhibit 81 Screenshot from USA Flag Instagram, USAFB 1612.....400</p> <p>9 Exhibit 82 Promotional graphic from USA Flag's Instagram, USAFB 1626.....402</p> <p>10 Exhibit 83 Email string from Joe Banach to Scott Henson of Nike re Time on Friday, USAFB 1656.....406</p> <p>11 Exhibit 84 Trademark Assignment, FFWCT 2074.....420</p> <p>12 Exhibit 85 Flag Football World Championship Tour balance sheet, FFWCT 8109.....421</p> <p>15</p> <p>16</p> <p>17</p> <p>18</p> <p>19</p> <p>20</p> <p>21</p> <p>22</p> <p>23</p> <p>24</p> <p>25</p>	<p style="text-align: right;">8</p> <p>1 reporter today is Kim McCann also representing</p> <p>2 Planet Depos. And now the witness will be sworn.</p> <p>3 CHARLES DAVIS,</p> <p>4 Having been first duly sworn, testified as</p> <p>5 follows:</p> <p>6 EXAMINATION</p> <p>7 BY MS. RICCHIUTO:</p> <p>8 Q. Good morning, Mr. Davis.</p> <p>9 A. Good morning. How are you?</p> <p>10 Q. I'm Anne Ricchiuto. We met just a</p> <p>11 second ago, I represent USA Football here to take</p> <p>12 your deposition today.</p> <p>13 Have you ever been deposed before?</p> <p>14 A. No, ma'am.</p> <p>15 Q. Have you ever watched a video of a</p> <p>16 deposition?</p> <p>17 A. I believe so. I would assume so.</p> <p>18 Q. Well, whose -- whose deposition have</p> <p>19 you watched --</p> <p>20 A. Just something on TV, yeah.</p> <p>21 Q. Okay.</p> <p>22 A. Nothing like this.</p> <p>23 Q. Have you ever, like, sat in on a</p> <p>24 deposition like Travis is doing today?</p> <p>25 A. No, ma'am.</p>

<p>17</p> <p>1 opportunity that I explored doing it outside of</p> <p>2 just being a player.</p> <p>3 Q. At that time, were you employed in</p> <p>4 some other capacity?</p> <p>5 A. 2015, yes, I was working for Nestlé.</p> <p>6 Q. In what type of role?</p> <p>7 A. I was in a marketing and basically a</p> <p>8 -- the -- I handled the distribution center in</p> <p>9 Indy.</p> <p>10 Q. Okay. We have that in common; we've</p> <p>11 talked about that.</p> <p>12 How did you meet Travis?</p> <p>13 A. Random phone call. I had a friend in</p> <p>14 Chicago who wanted to throw a football</p> <p>15 tournament -- or flag football tournament, I</p> <p>16 should say. He wanted some traveling teams, and</p> <p>17 I said I think I just saw a blog online that</p> <p>18 listed flag football tournaments. I'll give it</p> <p>19 shout and see it could be of service. And I gave</p> <p>20 it a shout, and that handsome gentleman over</p> <p>21 there decided the answer and, you know, we -- we</p> <p>22 hit it off.</p> <p>23 Q. So you reached out to him on behalf</p> <p>24 of someone else?</p> <p>25 A. Yes.</p>	<p>19</p> <p>1 school level. Boys don't even play it in</p> <p>2 high school. So I don't believe it's normal</p> <p>3 football, in my opinion. I believe it's a</p> <p>4 completely different sport that just obviously</p> <p>5 shares the same type of ball, in my opinion.</p> <p>6 Q. Flag football has more in common with</p> <p>7 tackle football than -- than flag football has in</p> <p>8 common with something like soccer.</p> <p>9 Do you agree with that?</p> <p>10 A. I'm not -- I'm not sure. I'd have to</p> <p>11 kind of sit down and compare apples to oranges.</p> <p>12 But I'd generally say maybe, possibly. But I'd</p> <p>13 -- I'd have to sit down and kind of compare</p> <p>14 apples to apples.</p> <p>15 Q. When someone says, I'm going to watch</p> <p>16 a football game this weekend, what do you -- what</p> <p>17 does that bring to mind for you?</p> <p>18 A. If I'm sitting down watching a</p> <p>19 football game, I would assume they're going to</p> <p>20 watch tackle football.</p> <p>21 Q. Okay. And what about, I'm playing in</p> <p>22 a football game this weekend?</p> <p>23 A. I would assume they're going to play</p> <p>24 tackle as well.</p> <p>25 Q. So how would someone connote to you</p>
<p>18</p> <p>1 Q. Kind of informally?</p> <p>2 A. Yes.</p> <p>3 Q. And then what happened next?</p> <p>4 A. We were on the phone for</p> <p>5 probably all -- I'll just say all day. I won't</p> <p>6 even put a number on it. It was -- it was all</p> <p>7 day. I paced up and down the sidewalk. We</p> <p>8 discussed flag football and the general landscape</p> <p>9 and how we both had, you know, ideas on how to</p> <p>10 make the sport better and we both thought it</p> <p>11 should be more mainstream. And, you know, it's</p> <p>12 just kind of goofy to think about now that, you</p> <p>13 know, that was just a random phone call and kind</p> <p>14 of where we are now. But yes, it was just some</p> <p>15 of the things we discussed at that point.</p> <p>16 Q. Is -- is flag football subset of</p> <p>17 football, generally?</p> <p>18 A. I -- I think technically people</p> <p>19 believe it is. I do not. I never have. It's</p> <p>20 entirely different to me. Obviously the sport is</p> <p>21 both football in -- in its different disciplines.</p> <p>22 But in my opinion, it's a completely different</p> <p>23 sport because it has different rules. It's</p> <p>24 played completely different. It has different</p> <p>25 disciplines. It's not offered at every high</p>	<p>20</p> <p>1 that they're playing flag or they're watching</p> <p>2 flag?</p> <p>3 A. In my experience, they're going say,</p> <p>4 Hey, are we going to playing flag this weekend,</p> <p>5 you know, We got a pickup flag game, or, Hey, you</p> <p>6 want to play in this flag tournament? They --</p> <p>7 THE REPORTER: Slow down.</p> <p>8 THE WITNESS: Sorry.</p> <p>9 A. They rarely ever, you know, say, hey,</p> <p>10 we're playing football this weekend because</p> <p>11 it's -- again, it's just different, in my</p> <p>12 experience at least.</p> <p>13 Q. So you and Travis had -- you hit it</p> <p>14 off quite swimmingly, it sounds like.</p> <p>15 How did you start to think about</p> <p>16 working together in terms of in a more formal</p> <p>17 capacity?</p> <p>18 A. Yeah, we originally started as Flag</p> <p>19 Football World Championship Tour. We thought the</p> <p>20 easiest route of entry for the time being would</p> <p>21 be to, you know, culminate some of the largest</p> <p>22 tournaments in the country, put them under kind</p> <p>23 of one tour, one umbrella, and go sell</p> <p>24 sponsorship on behalf of those and try to elevate</p> <p>25 the sport.</p>

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<p>129</p> <p>1 available to me?</p> <p>2 A. Typically you'd go most likely play</p> <p>3 in your local sport and social club. That's</p> <p>4 where the majority of just recreational adults</p> <p>5 play. And then from there, they would either go</p> <p>6 to more of a more advanced league that has adult</p> <p>7 recreational flag football, or they play in like</p> <p>8 a weekend tournament as well. So it's usually</p> <p>9 one of those fronts, in my opinion.</p> <p>10 Q. What about if I were thinking that I</p> <p>11 wanted to play -- you know, I think I'm pretty</p> <p>12 good and I want to play at a higher level than</p> <p>13 that.</p> <p>14 A. Yeah.</p> <p>15 Q. I've played at a Broad Ripple Park.</p> <p>16 I'm tired of that. You know, I'm ready to --</p> <p>17 A. Yeah.</p> <p>18 Q. -- ready to play at a higher caliber.</p> <p>19 A. Yep.</p> <p>20 Q. Would I find USA Flag as an</p> <p>21 opportunity at that point?</p> <p>22 A. Yes.</p> <p>23 Q. What else -- like, who else do you</p> <p>24 view -- I mean, I -- I've heard you say -- and I</p> <p>25 respect your view that you've got to best of the</p>	<p>131</p> <p>1 A. On the adult side? Youth side? Both</p> <p>2 sides?</p> <p>3 Q. Adult.</p> <p>4 A. Tournament operators on the adult</p> <p>5 side is ourselves. There is the United Flag</p> <p>6 Football League. There is the United Flag --</p> <p>7 U -- UFFA there in Cincinnati. There are</p> <p>8 Premier -- the Premier Flag Federation in</p> <p>9 Colorado. There is X Flag Football in San Diego.</p> <p>10 You've got Flag Football X. You've got Florida</p> <p>11 Flag Football. I mean, there's -- I mean,</p> <p>12 there's literally countless. We could -- we</p> <p>13 could do this for a very long time.</p> <p>14 Q. What about USA Football?</p> <p>15 A. USA Football has -- so USA Football,</p> <p>16 to my knowledge, only does one tournament and</p> <p>17 that's the one. They've only recently started</p> <p>18 doing that tournament in the last three years --</p> <p>19 two or three years. But other than that one</p> <p>20 tournament, there aren't any that -- to my</p> <p>21 knowledge, that they host themselves.</p> <p>22 Q. Is there -- has it ever happened that</p> <p>23 some third party -- any third party has confused</p> <p>24 USA Flag with USA Football that you're aware of?</p> <p>25 MR. HAYNES: Go ahead.</p>
<p>130</p> <p>1 best; right?</p> <p>2 A. Yes.</p> <p>3 Q. Who else might I encounter if I</p> <p>4 were -- you know, I considered myself a pretty --</p> <p>5 pretty darn good flag football player and I</p> <p>6 wanted to play at a higher level?</p> <p>7 A. That would be a -- a pretty difficult</p> <p>8 question to answer because there'd be a lot of</p> <p>9 qualifying questions I'd have to ask you first.</p> <p>10 But in general, you'd have to kind of tell me are</p> <p>11 you looking to play on just the weekend? Are you</p> <p>12 looking to play, you know, at a certain time of</p> <p>13 year? Kind of -- there'd be a lot of qualifying</p> <p>14 questions to that. That question's a little --</p> <p>15 little -- little too obscure to give a specific</p> <p>16 answer to. I'm sorry.</p> <p>17 Q. Okay. I'm looking to get on a</p> <p>18 National Team.</p> <p>19 A. Looking to get on a National Team,</p> <p>20 you would have to designate which National Team.</p> <p>21 You would have to designate, you know, what your</p> <p>22 end goal would be, and then I could, you know,</p> <p>23 potentially point you in the right direction.</p> <p>24 Q. Who are the other tournament</p> <p>25 operators in the flag space?</p>	<p>132</p> <p>1 A. That I'm aware of?</p> <p>2 Q. Uh-huh.</p> <p>3 A. Not -- not to my immediate knowledge.</p> <p>4 I -- possibly, but not -- not that I can recall</p> <p>5 right now at this second, no.</p> <p>6 Q. In connection with this lawsuit,</p> <p>7 has -- have any examples of confusion been</p> <p>8 brought to your attention?</p> <p>9 A. Confusion with the lawsuit? Could</p> <p>10 you elaborate a little more, please.</p> <p>11 Q. One of the -- one of the topics on</p> <p>12 which you've been designated is Topic 9, and</p> <p>13 that's communications with third parties</p> <p>14 inquiring as to whether you are related to,</p> <p>15 sponsored by, affiliated with, endorsed by, or</p> <p>16 otherwise connected to USA Football.</p> <p>17 A. Yes.</p> <p>18 Q. Okay. And so I'm asking whether</p> <p>19 that's ever happened?</p> <p>20 A. Confused by, not my experience so</p> <p>21 far. People have asked what the relationship is</p> <p>22 or the difference is or how do we co-exist in the</p> <p>23 flag football ecosystem, but they have never, in</p> <p>24 my opinion, confused us as the same brand. They</p> <p>25 just want to know kind of who does what, how it</p>

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<p>133</p> <p>1 works, what do we have to offer, what do they 2 have to offer in those regards. But in terms of 3 confusing us as the same person, no. 4 Q. How do you answer a question like 5 that? 6 A. Typically my answer is -- again, I'm 7 going to paraphrase because obviously I can add a 8 "and" here and a "the" there. 9 Q. Sure. 10 A. But typically when someone asks me, 11 you know, what is the difference, or they'll say, 12 you know, what is the relationship between you 13 guys and USA Football, I'd say at this current 14 time, we don't have a contractual relationship. 15 We're not affiliated in any shape, form, or 16 fashion. 17 In the past you may have seen things 18 where we work together where they've use our 19 events to scout, but at this current juncture 20 right now, we don't have a working relationship. 21 Q. And what about the question about how 22 do you co-exist? 23 A. How we co-exist is we run our 24 tournaments and run and they do their thing on 25 their own. We don't have any kind of crossover</p>	<p>135</p> <p>1 A. No. 2 Q. Is that a goal of USA Flag? 3 A. To have a formal relationship with 4 USA Football or -- I'm sorry. 5 Q. To have people believe that there 6 must be one. 7 A. No. 8 Q. What steps do you take to make sure 9 that people don't get confused? 10 A. What steps do we take to ensure 11 people aren't confused that we're USA Football? 12 Q. Right. 13 A. We keep running our tournaments. We 14 have our own brand identity. We have our own 15 operations team, our own website. Everything we 16 do is completely different, and it doesn't say 17 USA Football. So fundamentally we're different 18 from the start. 19 (Exhibit 36 was marked.) 20 Q. This is what's been marked as 21 Exhibit 36. Now, I'm going to require -- I'm 22 going to rely on your great expertise here of 23 socials this side of this. 24 Is this a -- some sort of social 25 media post by Flag Football World Championship</p>
<p>134</p> <p>1 in its current form. All of our tournaments are 2 listed here on our website. You would have to go 3 to their website to find out exactly what they're 4 doing on their side. 5 Q. How often do you get a question like 6 that? 7 A. Not very often. 8 Q. When's the last time you got one? 9 A. Maybe once in the last six months. 10 Maybe twice -- once or two. 11 Q. Who is that that asked you that? 12 A. I had Scott at Nike ask me kind of 13 what the relationship was between the two brands, 14 kind of what each is doing. And I can't recall 15 who the second one is off the top of my head. 16 But I know there was at least -- at least two. 17 Q. Is it a goal at all for third parties 18 who encounter USA Flag to have the impression 19 that USA Flag is associated in some way with 20 USA Football? Is that a goal of yours? 21 MR. HAYNES: Objection. Form. 22 A. No. 23 MR. HAYNES: Oh, I'm sorry. 24 A. Is that a goal of ours? 25 Q. Is that a goal of Mr. Davis?</p>	<p>136</p> <p>1 Tour Community? 2 A. Yes. 3 Q. What is the community part of it? Is 4 it its own page? 5 A. So the community is just a Facebook 6 group where flag football players can congregate, 7 talk about play strategy, ask questions about 8 tournaments we run, things of that nature. It's 9 a social function for them to be and have like a 10 safe space. 11 Q. Like, could I join it or -- 12 A. Yeah. 13 Q. -- do you have to be a player? 14 A. No. Anybody can join it. 15 Q. Okay. And this -- I don't know the 16 date of this, but you tell me if you have a magic 17 way to know. 18 A. I don't. I'm sorry. 19 Q. The Bates number on this, by the way, 20 for the record is USAFB 1650. The only hint I 21 have about the date is that it's announcing the 22 2023 Tournament Series -- or at least reflecting 23 it. Maybe not announcing but -- 24 A. Yes. 25 Q. -- saying here's the next year's</p>

<p>145</p> <p>1 Exhibit 38. Is this also a social media page, 2 Mr. Davis? 3 A. Yes. This looks to be our -- our 4 Instagram page that was originally FFWCT, that 5 was renamed to USA Flag Football for 6 forward-facing purposes. 7 Q. A couple of things: How can you tell 8 that this is Instagram? 9 A. So our -- if the -- 10 Q. I believe you. I'm really genuinely 11 asking. 12 A. Yeah, so the -- the handle on the top 13 left -- 14 Q. Uh-huh. 15 A. -- it says usaflagfb, that's our 16 Instagram handle. 17 Q. Okay. 18 A. That's the only social media that it 19 would appear like that. 20 Q. Tell me about -- you just mentioned 21 renaming the handle. 22 A. Yes. 23 Q. So there -- so this same account 24 existed but it had a different name? 25 A. Yes. It was FFWCT.</p>	<p>147</p> <p>1 like the original setup of the account and then 2 there's your persona -- 3 A. Yeah. 4 Q. -- your handle? 5 A. Yeah, so to speak. It's kind of like 6 what you're -- you're going by. It -- almost 7 like a d/b/a if you associate. 8 Q. Okay. Could you change your handle 9 every day? 10 A. No. You're not allowed to do that. 11 Q. How often are you allowed to change 12 it? 13 A. I'm not exactly sure on how what the 14 frequency is, but you only have a certain -- 15 certain amount of times you can change it, like, 16 per year. And then you can only change it a 17 certain amount of times, you know, in general. 18 You can't just go change it every single day. 19 Q. From a social media perspective, is 20 it good to change it or not good to change it? 21 A. Obviously if you're operating 22 business, you want to represent your business as 23 -- as best you can. So with us having USA Flag 24 as a forward-facing brand, it made the most sense 25 to tweak our social media handle to represent the</p>
<p>146</p> <p>1 Q. So it wasn't -- you didn't close 2 FFWCT and make a new account? 3 A. Correct. 4 Q. Do your -- how does that work with -- 5 like, is it just as easy as I go in Insta and I 6 say now I wish my name was? 7 A. Instagram works on 8 first-come-first-served basis. So someone 9 already has the name, it's not available to you. 10 So you have to pick a name that's close to what 11 you want it to be as possible that is available. 12 Q. But in terms of migrating or 13 renaming, I want to understand that process. 14 A. Yeah, so you just go into your 15 settings and it allows you to select a -- a user 16 name for your account. So, for example, I could 17 be account One 200, for example. One 200 could 18 have a user name of Charles if I wanted it to be. 19 I can change my user name to whatever I want for 20 that account. 21 So for that account we were using it 22 for FFWCT. I renamed it usaflagfb to, you know, 23 obviously coincide with our forward-facing brand 24 change. 25 Q. So is there kind of two -- there's</p>	<p>148</p> <p>1 same. 2 Q. Okay. And do you remember 3 approximately when you changed the handle? 4 A. I don't. It would have had to have 5 been the same time we made the forward-facing 6 flip on everything else. 7 Q. Okay. And is that something that you 8 would have done? 9 A. I would have done the Instagram one 10 for sure, yes. 11 Q. Were there others that you changed 12 over? 13 A. We changed over our Facebook, our 14 Twitter, our Instagram, and I believe our 15 LinkedIn were the big ones we changed -- and the 16 YouTube. 17 Q. Are those all the social sites that 18 you have? 19 A. To my knowledge that I can think of. 20 Q. For USA Flag? 21 A. Yeah, to my knowledge that I can 22 think of off the top of my head, yes. 23 Q. What about TikTok? 24 A. We do have a TikTok. We have a 25 TikTok and we have a Threads and such.</p>

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<p>149</p> <p>1 Q. A what?</p> <p>2 A. It's called Threads.</p> <p>3 Q. What's that?</p> <p>4 A. I don't know yet.</p> <p>5 MR. HAYNES: It -- it -- it's</p> <p>6 connected to Instagram. It's Instagram's --</p> <p>7 A. It's almost like a Twitter.</p> <p>8 MR. HAYNES: -- response to Twitter.</p> <p>9 THE WITNESS: Yeah.</p> <p>10 MS. RICCHIUTO: All people who do not</p> <p>11 want to be on X.</p> <p>12 Q. You're not on Threads?</p> <p>13 A. It gives you one automatically now,</p> <p>14 so I -- I looked and we had one one day.</p> <p>15 Q. Oh, Insta?</p> <p>16 A. Yes.</p> <p>17 Q. Again, I -- I -- I'm impressed with</p> <p>18 Bryan here, and I will consult with my teenager</p> <p>19 for further information.</p> <p>20 Okay. What I want to ask you about</p> <p>21 with this document, I -- we don't know exactly</p> <p>22 when this is from other than we know that it was</p> <p>23 sometime after the switch, so Q4 or later.</p> <p>24 Do you agree with that -- Q4 of 2022</p> <p>25 or later?</p>	<p>151</p> <p>1 us for a repost.</p> <p>2 Q. So is that mack_attack?</p> <p>3 A. Yes. That's why I believe they say,</p> <p>4 I appreciate the support. If you notice, under</p> <p>5 the usaflagfb that's kind of in that rectangle</p> <p>6 box, you notice the three dots.</p> <p>7 Q. Uh-huh.</p> <p>8 A. So typically when you repost</p> <p>9 someone's content, it will copy the caption they</p> <p>10 wrote and repost the photo as well. So if</p> <p>11 someone requests that, Hey, will you share my</p> <p>12 photo or my video or my highlight, you basically</p> <p>13 can hit repost, it will repost their caption that</p> <p>14 they wrote and the photo that they posted.</p> <p>15 Q. What about their hashtags?</p> <p>16 A. It will repost everything they did.</p> <p>17 So basically whatever they've posted, it's just</p> <p>18 going to recopy that and post it to ours for</p> <p>19 additional visibility.</p> <p>20 Q. It would be like a share on Facebook?</p> <p>21 A. Yes.</p> <p>22 Q. Okay. I'm old so I know that one</p> <p>23 sort of the best.</p> <p>24 If you wanted to, can you change the</p> <p>25 hashtags?</p>
<p>150</p> <p>1 A. Yes.</p> <p>2 Q. There are -- do they still call them</p> <p>3 hashtags?</p> <p>4 A. Yes.</p> <p>5 Q. Okay. There are -- or sometimes they</p> <p>6 call it tagging or -- like what would you call</p> <p>7 the hashtag here?</p> <p>8 A. They would just be -- be hashtags.</p> <p>9 Just public -- public domain hashtags.</p> <p>10 Q. Okay. And the hashtags here are</p> <p>11 #usafootball, #usatheone, #usnft, #flagfootball,</p> <p>12 #football, #usaflag, and #ffwct.</p> <p>13 Do you see that?</p> <p>14 A. Yes.</p> <p>15 Q. Okay. And that I think the content</p> <p>16 there is saying: To the house. I don't know how</p> <p>17 I pulled off the move.</p> <p>18 Agree?</p> <p>19 A. Yes.</p> <p>20 Q. I perceive that to be a complement to</p> <p>21 someone who is playing flag football that did</p> <p>22 something very neat.</p> <p>23 A. Yeah, so this would -- this would be</p> <p>24 a -- to my appearance, this is a repost of</p> <p>25 someone else's content that tagged us and asked</p>	<p>152</p> <p>1 A. To my knowledge, I believe you can</p> <p>2 now. At the time when you reposted, I don't</p> <p>3 think you could. I think you had to take it as</p> <p>4 is. Now you can.</p> <p>5 Q. So we don't know exactly when this</p> <p>6 was and what the policy was, I understand that.</p> <p>7 A. Right.</p> <p>8 Q. If this happened today and</p> <p>9 mack_attack128 tagged USA Flag and had all these</p> <p>10 other hashtags, is there any policy or practice</p> <p>11 in place about what you would do about those</p> <p>12 hashtags?</p> <p>13 A. Yeah, just -- just for common --</p> <p>14 common courtesy in the space, I -- I wouldn't use</p> <p>15 hashtags that more than likely USA Football uses</p> <p>16 the most. So their #usafootball, #usatheone, and</p> <p>17 #usnft, I -- I would not use those hashtags for</p> <p>18 the posts.</p> <p>19 Q. And when did you start having that</p> <p>20 common courtesy policy?</p> <p>21 A. When we no longer had a working</p> <p>22 agreement, I stopped using those just -- just for</p> <p>23 common courtesy.</p> <p>24 Q. And that's -- right now we're talking</p> <p>25 about like a repost scenario, which might be</p>

<p>205</p> <p>1 Q. Well, have -- have you taken it down?</p> <p>2 A. I couldn't tell you either way. I</p> <p>3 don't do the website so I don't know.</p> <p>4 Q. Who does the website?</p> <p>5 A. Your friend, Travis.</p> <p>6 Q. Okay. Have you had any conversations</p> <p>7 about taking this photo down?</p> <p>8 A. No, I don't believe so.</p> <p>9 Q. Were you aware that you've been</p> <p>10 requested to take it down?</p> <p>11 A. I don't believe so, no.</p> <p>12 Q. Okay. If it were a new request that</p> <p>13 came to you not from a lawyer, and Brittany</p> <p>14 texted you and said, Hey, we're worried about</p> <p>15 this picture, can you just take it down, please;</p> <p>16 it's right on the front of your website, we're</p> <p>17 worried about it's confusing, can you just take</p> <p>18 it down, would you take it down?</p> <p>19 A. In this current moment, like just</p> <p>20 right now?</p> <p>21 Q. Sure.</p> <p>22 A. I definitely would discuss it. I</p> <p>23 mean, I'm not -- I'm not -- not opposed to</p> <p>24 anything. I would definitely have a conversation</p> <p>25 about it.</p>	<p>207</p> <p>1 A. Yes.</p> <p>2 Q. With respect to other platforms, do</p> <p>3 you have the ability to remove those tags or</p> <p>4 "ats" or whatever it is that would -- that would</p> <p>5 direct a viewer to another account?</p> <p>6 A. Instagram is pretty -- pretty</p> <p>7 specific in that it -- honestly, it's probably</p> <p>8 the only one of the popular social media</p> <p>9 platforms that has a lot of that -- that type of</p> <p>10 resharing functionality. Twitter has some but</p> <p>11 it's -- they don't operate like Instagram does.</p> <p>12 Instagram is kind of a unique</p> <p>13 scenario off by itself in an outlier. Those same</p> <p>14 type of situations that we discussed previously</p> <p>15 with, you know, us reposting something that has a</p> <p>16 hashtag pertinent to someone else specifically or</p> <p>17 used more than, you know, by someone else, that</p> <p>18 doesn't really apply on a Facebook or especially</p> <p>19 a Snapchat where the stuff's only there for 24</p> <p>20 hours. That's just nonexistent; there's none of</p> <p>21 that there.</p> <p>22 Facebook you can share a post but</p> <p>23 it's -- it's super manual and you don't really</p> <p>24 get the players on your feed to be able to see</p> <p>25 those. So those are -- those don't really happen</p>
<p>206</p> <p>1 Q. When you just look at this photo and</p> <p>2 you read the caption which doesn't say anything</p> <p>3 about USA Football --</p> <p>4 A. Right.</p> <p>5 Q. -- can you understand why there's</p> <p>6 concern around use of this photo right on your</p> <p>7 website?</p> <p>8 MR. HAYNES: Objection. Form.</p> <p>9 A. Yes.</p> <p>10 Q. Okay. Thank you.</p> <p>11 MS. RICCHIUTO: Let's take a break.</p> <p>12 THE VIDEOGRAPHER: We're off the</p> <p>13 record at 12:37 p.m.</p> <p>14 (Break from 12:36 p.m. to 2:01 p.m.)</p> <p>15 THE VIDEOGRAPHER: The time is</p> <p>16 2:02 p.m. We're back on the record.</p> <p>17 Q. (BY MS. RICCHIUTO) Okay. Mr. Davis,</p> <p>18 I think I have just a couple of more questions</p> <p>19 related to social media.</p> <p>20 A. Yes, ma'am.</p> <p>21 Q. We talked about specific to Instagram</p> <p>22 whether you can untag or un-at or, you know,</p> <p>23 remove features of posts where someone else has</p> <p>24 added tags or "ats."</p> <p>25 Are you with me?</p>	<p>208</p> <p>1 either.</p> <p>2 YouTube we don't use very much and we</p> <p>3 don't get tagged on YouTube, so that -- that</p> <p>4 doesn't apply to the scenario either. I'm trying</p> <p>5 to think what else we use. Threads is so new we</p> <p>6 -- we barely do anything there. But to my</p> <p>7 knowledge, at all social media platforms that we</p> <p>8 have, we don't really have that same</p> <p>9 functionality that would require us to even kind</p> <p>10 of monitor a repost or anything like that.</p> <p>11 Instagram is pretty unique and it's the only</p> <p>12 platform that really does that.</p> <p>13 Q. So if I tagged you in a Facebook</p> <p>14 post -- you, USA Flag --</p> <p>15 A. Yes.</p> <p>16 Q. -- and you saw it and you were happy</p> <p>17 to share it, but you didn't want to be tagged in</p> <p>18 it, for whatever reason, or you thought I tagged</p> <p>19 Travis and it should have been Tommy, can you</p> <p>20 share it and take off somebody else's --</p> <p>21 A. No.</p> <p>22 Q. -- tags?</p> <p>23 A. No.</p> <p>24 Q. You're stuck with it?</p> <p>25 A. They can -- so the only thing -- the</p>

<p>209</p> <p>1 only functionality you have at that point is you 2 can go to that post and remove yourself from the 3 tag. But in terms of editing anything they 4 actually physically typed, you don't have that 5 functionality to edit that at all.</p> <p>6 Q. Can you remove others than 7 yourself --</p> <p>8 A. No.</p> <p>9 Q. -- from tags?</p> <p>10 A. No. You can only remove yourself.</p> <p>11 Q. Okay. Platform, I want to make sure 12 I have all your handles. So we've -- LinkedIn we 13 looked at physically. Is there any other 14 LinkedIn page for USA Flag? FFWCT? FlagSpin?</p> <p>15 A. The only LinkedIn page I'm privy to 16 is our original FFWCT LinkedIn page that we 17 re-branded to USA Flag.</p> <p>18 Q. That we looked at today?</p> <p>19 A. Yes, ma'am.</p> <p>20 Q. Okay. What about Facebook?</p> <p>21 A. Facebook, we have our -- we have our 22 Flag Football World Championship Tour account. 23 For whatever reason our master account still says 24 we're the Flag Football World Championship World 25 Tour, even though the forward-facing portion of</p>	<p>211</p> <p>1 Q. And the content on all of the sites 2 with the handles that you've just described, that 3 is content that was either posted by you 4 personally or is somehow attributable to 5 USA Flag?</p> <p>6 A. Yes.</p> <p>7 Q. Did there come a time -- we're going 8 to switch gears -- when USA Flag decided to 9 approach -- or -- or I guess it could have been 10 before that -- decided to approach the NFL about 11 a collaboration?</p> <p>12 A. Could you ask the question one more 13 time. I'm so sorry.</p> <p>14 Q. Did there come a time where you and 15 Travis, in whatever corporate form at the time, 16 wanted to approach USA Flag about a 17 collaboration -- I mean, the NFL.</p> <p>18 A. Yes.</p> <p>19 Q. Thank you.</p> <p>20 A. Yes.</p> <p>21 Q. There did, yes?</p> <p>22 A. There was a time, yes.</p> <p>23 Q. Okay. When is the first time that 24 you-all had any conversations with anybody at the 25 NFL?</p>
<p>210</p> <p>1 it says USA Flag. So that's Facebook's side. 2 We have the USA Flag Community group, 3 which is a group on Facebook, it's just kind of a 4 public group. It's not really a formal business 5 page like the regular pages on Facebook. 6 FlagSpin has a page. USA 7-on-7 has a page. I 7 think that's it, to my knowledge.</p> <p>8 Q. For Facebook?</p> <p>9 A. Yes, ma'am.</p> <p>10 Q. What about Instagram?</p> <p>11 A. Instagram, FlagSpin has a page. We 12 have the usaflagfb Instagram account that used to 13 be FFWCT that we branded on the front. There's 14 the Mex Flag as well, and then there's a 15 USA 7-on-7 page as well.</p> <p>16 Q. What about Twitter or X?</p> <p>17 A. Twitter, we have a USA Flag Twitter 18 handle, which I believe it's fully spelled out 19 USA Flag Football because, again, social media is 20 is first-come-first-served. So usaflagfb was not 21 available. Somebody already had that for some 22 reason or somehow, so we had to go USA Flag 23 Football for that one. And then FlagSpin has -- 24 has a -- a handle as well. USA 7-on-7 has a 25 handle as well for those.</p>	<p>212</p> <p>1 A. Directly?</p> <p>2 Q. Sure.</p> <p>3 A. The first time I had a direct 4 conversation with anybody at the NFL was during 5 our in-person meeting with myself, Travis, Steve 6 Neil and Curtis Hollomon. I can't remember the 7 exact month we were there, but I feel like -- I 8 can't remember what month it was, honestly. But 9 that was the first time speaking to anybody at 10 the NFL.</p> <p>11 Q. Maybe August of 2022?</p> <p>12 A. Something -- something like -- I 13 really don't remember the exact month.</p> <p>14 Q. Okay. Prior to that, were there -- 15 so you were not involved in any outreach or 16 communications with the NFL before that?</p> <p>17 A. To my knowledge, most of the 18 communication was done via us directly through 19 Curt and Steve, and then they directly talked to 20 Troy and -- and Co., I would say.</p> <p>21 Q. Okay.</p> <p>22 (Exhibit 46 was marked.)</p> <p>23 Q. This is Exhibit Number 46. This is 24 FFWCT 1074 through 1088. This is an email dated 25 March 16, 2017, from Football World Tour to</p>

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<p>373</p> <p>1 involves communication with your lawyers. 2 THE WITNESS: Okay. 3 Q. How much subpoenas do you understand 4 that I have prepared for Steve Neil? 5 A. I just know that were going to serve 6 him the one subpoena. 7 Q. Okay. And what I want to know is if 8 you've talked to him and told him not to accept 9 it? 10 A. No. No, I have not. 11 Q. Do you know if I've served a subpoena 12 on him? 13 A. I just know that you were going to. 14 I don't know anything after that. 15 Q. Okay. Curtis told me something to 16 the effect of Steve saying, You're going to have 17 to find me basically. And I'm curious whether 18 Steve has said that to you also? 19 A. I have not had a communication with 20 Steve or Curt. 21 Q. Okay. Do you know whether 22 Steve Neil's business address at Nyne Global is 23 200 Miranova Place? 24 A. I could not tell you what their 25 address is.</p>	<p>375</p> <p>1 A. I -- I believe I am aware of that. I 2 vaguely remember. 3 Q. Did you read that transcript? 4 A. I don't believe I did, to my 5 knowledge right now. Sorry. 6 Q. If your expert testified about 7 mathematical errors in his report as a result of 8 mathematical errors in some of the proposals made 9 to the NFL, do you have any reason to say that 10 testimony's not right? 11 A. I don't. I wouldn't be privy to his 12 -- his calculations or computations. I'm -- I'm 13 no expert for sure. 14 Q. How much money -- as we sit here 15 today, how much money are you hoping to achieve 16 by filing a lawsuit against USA Football? 17 A. I'm not hoping to achieve any kind of 18 specific number. That's up to the Court. I have 19 no -- no dog in that fight, so to speak, in the 20 number or request. 21 Q. You have no dog? 22 A. As a specific number like, oh, I want 23 \$7, like I -- that's totally up to the Court. 24 Q. Okay. But you believe you're 25 entitled to some money from USA Football?</p>
<p>374</p> <p>1 Q. Okay. 2 A. I haven't mailed them anything or 3 been there. 4 Q. Do you know if Steve Neil moved in 5 the last 60 days? 6 A. In the last -- I couldn't tell -- I 7 haven't had any conversations with Steve or Curt. 8 Q. Okay. So if I can't find him, it's 9 not because you told him to hide? 10 A. Definitely not. 11 Q. Okay. Do you know -- oh, my gosh. 12 I'm not going to know his first name. 13 You-all have hired an expert in this 14 case with the last name Porter. 15 Does that ring a bell? 16 A. I'm not privy to the experts' names. 17 I'm sorry. 18 Q. Okay. Do you know that somebody on 19 your behalf has submitted a report saying how 20 much money you-all should be entitled to as a 21 result of your lawsuit? 22 A. I am aware that there was an expert 23 that re -- prepared a report, yes. 24 Q. Okay. Do you -- are you aware the 25 expert was depose?</p>	<p>376</p> <p>1 A. I believe so, yes. 2 Q. Has USA Flag ever described itself as 3 a governing body or anything along those lines? 4 MR. HAYNES: Objection. Form. 5 A. I believe we've called ourselves a 6 governing organization or -- I know we've called 7 ourselves a governing organization for sure. I 8 don't know if we've ever called ourselves an NGB, 9 maybe like a self-appointed governing something, 10 maybe. I couldn't recall specifically. 11 Q. Where would you have called yourself 12 something like that? 13 A. Maybe in our rules or in "About Us" 14 section probably. 15 Q. And who is responsible for that 16 content? 17 A. Travis mostly does all the website 18 content. 19 Q. This is Exhibit 77. 20 A. Okay. 21 (Exhibit 77 was marked.) 22 Q. It doesn't have a Bates number on it, 23 but it was filed with the Court. On page 2 of 24 this document, you see some highlighted language. 25 Well, first of all, what is this?</p>


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<p>377</p> <p>1 A. This looks like our general rules on 2 our website. 3 Q. Okay. And from the date on this when 4 it was printed, I believe that it reflects that 5 it was printed on July 6, 2023. 6 Do you see that? 7 A. I do. 8 Q. Okay. And it says: (As read) We 9 declare USA Flag the self-appointed national 10 governing organization of the sport of flag 11 football through common consent of our 12 participating teams. 13 Do you see that? 14 A. Yes. 15 Q. Okay. So what's -- what does that 16 mean? 17 A. Because a lot of teams, players all 18 view us as kind of the pillar in flag football in 19 playing our events in -- in -- in -- in large 20 quantities, we believe we're a governing-type 21 organization that dictates rules, dictates 22 competition, hosts competitions, and organizes 23 events. So by that theory we make that 24 statement. 25 Q. Where did you get the understanding</p>	<p>379</p> <p>1 governing body for all forms and styles of the 2 sport. 3 So you just told me about how 4 sensitive national governing body is. 5 A. Correct. 6 Q. But you felt like ultimate governing 7 body did not cause that same connotation for 8 someone who is understanding or -- or reading 9 those words? 10 A. Correct. 11 Q. So the average person would know, oh, 12 this isn't the national governing body, it's the 13 ultimate governing body? 14 A. I wouldn't be privy to what the 15 average person would know. I'm sorry. 16 Q. Well, you just gave me a big 17 explanation about how important it was not to say 18 those letters in a row, and I think those letters 19 you were referring to were NGB. 20 A. Correct. 21 Q. But UGB, fair game in your mind? 22 A. Yes. 23 Q. Why? 24 A. Because, again, I believe the term 25 specifically "national governing body" right in a</p>
<p>378</p> <p>1 that there could be a self-appointed national 2 governing organization? 3 A. Just by kind of going through the 4 years and seeing other organizations do the same 5 thing, we assumed we can do the same thing as 6 well. 7 Q. What other organizations have done 8 that? 9 A. Other various organizations we've 10 seen in softball, we've seen in other -- other 11 sports are kind of self-appointed governing 12 organizations. We didn't feel that saying like 13 we were a governing body specifically was 14 allowed. We thought that was a protected mark 15 with those specific three letters and that 16 specific phrasing of the three words those three 17 letters represent. So we tried our best to not 18 -- not do that because we -- we thought that 19 was -- you know, you had to have some type of 20 certification or clearance to use that. 21 Q. Okay. And so the second highlighted 22 section says US -- 23 MR. HAYNES: Objection. 24 Nonresponsive. Sorry. 25 Q. -- says: USA Flag is the ultimate</p>	<p>380</p> <p>1 row, those three letters sequentially are 2 protected, as well as the acronym "NGB" are 3 federally protected. So we don't use those -- 4 those three. 5 Q. How would someone reading this know 6 the difference between and ultimate governing 7 body and a national governing body? 8 A. I'm not -- 9 MR. HAYNES: Objection. Form. 10 A. I'm not for sure. 11 Q. Well, what do you hope somebody 12 thinks you do by calling yourself the ultimate 13 governing body? 14 A. That we govern the sport of -- of 15 flag football per our events. 16 Q. Do you agree that the word "ultimate" 17 connotes, like, top dog, main one, most 18 important? 19 A. I would agree with that acronym. 20 Q. Okay. 21 A. Or synonym. 22 Q. Then this language that we're looking 23 at, if I told you that I had seen that on other 24 parts of your website, would you be surprised by 25 that?</p>

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<p style="text-align: right;">437</p> <p>1 exhibit with the lowest designation, for example. 2 MR. HAYNES: Right. 3 MS. RICCHIUTO: That has been my 4 effort. If it turns out that I have gotten that 5 wrong, and, for example, brought an AEO today 6 that Taylor and I have already agreed is not AEO, 7 for whatever reason -- 8 MR. HAYNES: Right. 9 MS. RICCHIUTO: -- I'm assuming and 10 hoping that those -- 11 MR. HAYNES: Yeah, so I don't know 12 hardly anything that he knows, and so that -- 13 he's going -- that's what -- you're going to be 14 doing the actual page and line designation. So 15 he'll know -- 16 MR. HARRIS: This is just 17 preliminary. 18 MR. HAYNES: This is just preliminary 19 for the record until -- until we get the actual 20 record and so that we've got -- got that covered. 21 And then what -- however -- however he designates 22 it and approved by Mark and to myself after we 23 see them, that will be the actual designations 24 after that. So yes. 25 MS. RICCHIUTO: Okay. And do you</p>	<p style="text-align: right;">439</p> <p>1 document, we agree that's not -- 2 MR. HAYNES: So -- so here's my 3 position. 4 MR. HARRIS: It's still confidential, 5 right, we're not talking about that. 6 MS. RICCHIUTO: Understood. No -- 7 nothing's going in the newspapers. 8 MR. HAYNES: Okay. Right. 9 MS. RICCHIUTO: Yeah. 10 MR. HAYNES: What he said. 11 MS. RICCHIUTO: If you've designated 12 it that way -- or like NFL had its own 13 designations, for example. 14 MR. HAYNES: And I'm not trying to -- 15 to change the designation of any of the documents 16 themselves. I'm talking about the conversations 17 around them until his -- one question might be 18 confidential or attorneys' eyes and everything 19 else might not be -- I mean, attorneys' eyes only 20 and everything else might not. So I'm just 21 trying to cover the topic. Not the -- the 22 documents are already -- they're -- whatever 23 they're designated, I'm not trying to change 24 those. 25 MS. RICCHIUTO: Okay. That's</p>
<p style="text-align: right;">438</p> <p>1 have a position, even preliminarily on -- maybe 2 we need to go back and look at the PO -- 3 paragraph 16 in the protective order says that 4 regardless of designation by a party, information 5 gotten from a third party, even if it's same, 6 doesn't carry the designation. 7 So, for example, I have tried to use 8 Curtis Hollomon or NFL versions where I have 9 them. 10 MR. HAYNES: Right. 11 MS. RICCHIUTO: Are we in agreement 12 that those are no longer AEO? 13 MR. HAYNES: I would turn to my 14 co-counsel. 15 Can you opine on that issue? 16 MR. HARRIS: They're no longer AEO. 17 MR. HAYNES: Okay. 18 MR. HARRIS: They've been produced by 19 a third party, so can't take that position. 20 MR. HAYNES: Okay. 21 MS. RICCHIUTO: Okay. So when which 22 go through these -- and, again, I'm not -- I know 23 you're doing your best while I'm flying 24 through -- but if we go through these and 25 something was an NFL document or a Curtis</p>	<p style="text-align: right;">440</p> <p>1 helpful. 2 MR. HAYNES: That's all I have. 3 THE VIDEOGRAPHER: Okay. This 4 concludes the videotaped deposition of 5 Charles Davis. The time is 6:27 p.m. We are off 6 the record. 7 (Time noted - 6:27 p.m.) 8 9 10 11 12 13 14 15 16 17 18 19 20 21 22 23 24 25</p>

Transcript of Charles Davis, Individually and as Designated Representative ¹¹¹ (441 to 444)
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<p>1 IN THE UNITED STATES DISTRICT COURT 2 FOR THE EASTERN DISTRICT OF TEXAS 3 SHERMAN DIVISION 4 USA FOOTBALL, INC.,) 5) 6 Plaintiff,) 7) CIVIL ACTION 8 VS.) 9) NO.: 4:23-CV-00465 10) and 4:23-CV-00516-ALM 11 FFWCT, LLC; USA FLAG, LLC;) 12 AND TRAVIS BURNETT,) 13) 14 Defendants.) 15 16 REPORTER'S CERTIFICATION 17 VIDEOTAPED ORAL DEPOSITION OF 18 FFWCT, LLC AND USA FLAG, LLC 19 BY AND THROUGH ITS DESIGNATED REPRESENTATIVE, 20 AND IN HIS INDIVIDUAL CAPACITY 21 CHARLES DAVIS 22 APRIL 11, 2024 23 24 I, Kim A. McCann, Certified Shorthand Reporter in 25 and for the State of Texas, hereby certify to the following: That the witness, CHARLES DAVIS, was duly sworn by the officer and that the transcript of the oral deposition is a true record of the testimony given by the witness; I further certify that pursuant to FRCP Rule</p>	<p>441</p>
<p>1 30(f)(1) that the signature of the deponent: 2 _____ was requested by the deponent or a party 3 before the completion of the deposition and returned 4 within 30 days from date of receipt of the transcript. 5 If returned, the attached Changes and Signature Page 6 contains any changes and the reasons therefor; 7 ____X____ was not requested by the deponent or a 8 party before the completion of the deposition. 9 That the amount of time used by each party at the 10 deposition is as follows: 11 MS. RICCHIUTO - 7 HOURS : 5 MINUTES 12 I further certify that I am neither counsel for, 13 related to, nor employed by any of the parties or 14 attorneys in the action in which this proceeding was 15 taken. 16 Further, I am not a relative or employee of any 17 attorney of record in this cause, nor do I have a 18 financial interest in the action. 19 Certified to by me this 19th day of April, 2024. 20 21  22 Kim A. McCann, RMR, CRR, CSR 23 Texas CSR No. 5520 24 Expiration Date: 10/31/2025 25 Planet Depos Worldwide 451 Hungerford Drive Suite 400 Rockville, MD 20850</p>	<p>442</p>